

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

KENNETH A. FOSTER,)	
)	
Plaintiff)	
)	
v.)	Civil No. 01-252-P-C
)	
CAPTAIN, YORK COUNTY JAIL, et al.)	
)	
)	
Defendants)	

Recommend Decision on 42 U.S.C. § 1983 Complaint

On October 23, 2001, Kenneth Foster filed a complaint seeking relief under 42 U.S.C. § 1983 for alleged violations of his constitutional rights. (Docket No. 2.) After efforts were made to get Foster's motion to proceed in forma pauperis in proper form, I issued an order granting Foster leave to so proceed but warning him that his complaint was particularly susceptible to summary dismissal as plead. (Docket No. 5.) Foster has notified the court that he intends to proceed with this suit (Docket No. 6) and has filed an amended complaint (Docket No. 7.) For the reasons below I recommend that the Court **DISMISS** Foster's complaint pursuant to its screening obligations under 28 U.S.C.

§ 1915A.

Allegations and Relief Sought

"[F]alse accusations, slander, perjury," constituted Foster's entire statement of his claim in his first complaint. Foster's amended complaint sets forth in sparse detail the factual allegations against a lone defendant, Captain Boyton.¹ As best that I can garner

¹ Foster does commence his amended complaint by stating that he "would like to describe the suffering and mental anguish I have suffered since York Sheriff (fill in name) slandered me and defamed

from the pleading, Foster contends that Boyton made false accusations against him involving smoking, use of a lighter, drug use, and contraband connected with a jail maintenance shed. The facts as presented by Boyton are fractured. It appears Boyton made a surveillance video depicting Foster in the alleged misconduct. This video was not used in the disciplinary proceedings. Apparently in relation to images on the video Foster asserts that he never smoked anything, but just picked up a used paper cup and threw it in the trash. His lighter had been confiscated before the date he was accused of using one. After the incident no drugs were found and drug-sniffing dogs did not detect drugs. Though requested, Foster was refused a drug and polygraph test he desired to prove his innocence. He was not allowed to question the informant used by the prison. He also argues that he cannot be the source of contraband because numerous people have been caught smoking since the incident involving Foster, so someone else must be providing the goods.

With respect to his injury, Foster stated that he was looking forward to leaving the facility by a certain date and was shedding two and one half days of his sentence for

my good character on (Sept. 25, 01).” The following paragraphs mention only Boyton. Judging from the fill-in-the-brackets format of his submission it is possible that Foster was relying on a model pleading to frame his complaint. If he is trying to state a claim against a sheriff he has entirely failed to do so since there are no factual allegations involving such a person.

I note that this complaint is captioned et al. because in his initial pleading Foster listed a “confidential informant” as a defendant. He has no allegations that would support a claim against a “confidential informant.” About a month after filing his amended complaint Foster sent some additional paperwork to this court referencing this case. One paper pronounces that Foster is “going to bring a ‘civil rights’ action against the York County Jail.” It states that his Fourteenth Amendment rights were violated because the jail failed to let him call witnesses, did not let him cross-examine video or recording evidence; did not let him cross examine witnesses against him; and denied him counsel at the hearing. These papers were unaccompanied by the complaint form, a filing fee, or a motion to proceed. Included is a statement of “case” that lists seven grievances with the disciplinary process. Many of the facts overlap with Foster’s amended complaint considered herein. I have treated this as a supplemental pleading in this case. If Foster intends to file a separate action against York County Jail he is hereby on notice that he will have to comply with the filing requirements as he, eventually, did in this case.

every week that he was working. Now he cannot work and is unsure if he will face additional time because of the false accusations. He was looking forward to being reunited with his family but now is unable to face his family in light of the new charges as they now view him as a career criminal. He cannot sleep due to worry about his future, he has constant headaches, has no appetite, feels sick when he does eat, and has acid indigestion.

Discussion

Foster's complaint fails to state a claim pursuant to 42 U.S.C. § 1983 for a number of reasons. To the extent there are new criminal charges or administrative proceedings pending or resolved against him in state court or through the jail administrative process, he cannot mount a constitutional claim in a civil rights complaint unless he first is cleared of the charges. This challenge falls squarely within the doctrine of Heck v. Humphrey, 512 U.S. 477,487 (1994) and Edwards v. Balisok, 520 U.S. 641 (1997). A claim such as Foster's alleging that deceit and bias permeated the disciplinary process challenges the validity of a disciplinary proceeding for prison infractions; it is not cognizable under 42 U.S.C. § 1983 because it would necessarily imply the invalidity of the punishment imposed. Edwards, 520 U.S. at 648 (extending Heck to prison disciplinary procedures challenge). Foster cannot lodge such a challenge unless he can prove that the disciplinary determination has been overturned. Heck, 512 U.S. at 486-87.

To the extent Foster hopes to mount a constitutional claim based upon the loss of trustee status, he has no liberty interest in a particular prison classification and therefore cannot base his constitutional claim upon a deprivation of such an interest. The First Circuit has unequivocally concluded that this type of challenge based on the loss of work

privileges does not implicate a constitutionally protected liberty interest. See Bowser v. Vose, 968 F.2d 105 (1st Cir. 1992).

I further note that while Foster complains of poor sleep and upset stomach, he has not alleged that he suffered actual physical injury as a result of the defendant's conduct. Foster anticipates that the problems of which he complains cannot be resolved in time for his trustee job to be reinstated and that he "can only look forward to resolving this in civil court." It appears that Foster anticipates monetary damages alone. As such, the complaint is subject to dismissal for failure to state the predicate for a claim for monetary damages as required by 42 U.S.C. § 1997e(e).

Conclusion

For these reasons I recommend that the Court **DISMISS** this complaint pursuant to 28 U.S.C. § 1915A and § 1915(e)(1)(B)(ii) because it fails to state a claim on which relief may be granted.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Margaret J. Kravchuk
U.S. Magistrate Judge

January 4, 2001

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U.S. District Court

District of Maine (Portland)

CIVIL DOCKET FOR CASE #: 01-CV-252

FOSTER v. CAPTAIN, YORK COUNTY, et al

Filed: 10/23/01

Assigned to: JUDGE GENE CARTER

Demand: \$0,000

Nature of Suit: 550

Lead Docket: None

Jurisdiction: Federal Question

Dkt# in other court: None

Cause: 42:1983 Prisoner Civil Rights

KENNETH A FOSTER

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plaintiff

[COR LD NTC pse] [PRO SE]

YORK COUNTY JAIL

149 Jordan Springs Rd

ALFRED, ME 04002

v.

CAPTAIN, YORK COUNTY JAIL

defendant

CONFIDENTIAL INFORMANT

defendant